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CORRESPONDENCE

New York, October 5th, 1916.

Editor of California Law Review,

Sir:—

I read with interest the paper of Mr. Robert L. McWilliams entitled "Limitations of the Theory of Corporate Entity in California," published in your issue for September 1916. In the main, I am in accord with the views expressed in the article, and in particular with the proposition that the doctrine of corporate entity should not be pushed too far. In a paper in the Yale Law Journal a few years ago, I said, in substance, that the courts should not permit the doctrine of corporate entity to be used as a whitewash for corporate wrongdoing. (24 Yale Law Journal 177).

Mr. McWilliams states that the doctrine of disregard of the corporate fiction is often involved in cases of fraud. He goes

on to say: "Frequently cases of fraudulent conveyances made by a vendor to a corporation organized by him are cited as illustrative of this phase of the doctrine." In the foot-note to this sentence he refers to my paper, "Piercing the Veil of Corporate Entity." (12 Columbia Law Review, 496). Mr. McWilliams then says that resort to the doctrine is not necessary in these cases, since the transfer is void as to creditors in any event, and he concludes: "There is no necessity for looking through the corporate veil in such a case."

Now I never suggested, at least I never meant to suggest, that there was any fundamental necessity for penetrating the corporate cloak in these cases. The thought which I meant to convey in that part of my paper was that the courts shake aside the doctrine of corporate entity in these cases, and whether rightly or wrongly, rest their decisions on the express point that courts will ignore the conception of legal corporate entity when it is sought to be used as a shield for fraudulent or illegal acts. It may well be, as Mr. McWilliams says, that there is no real necessity for looking through the corporate veil in this particular class of cases. The fact remains, however, that courts do look through the corporate veil and that they rest their decisions upon the precise proposition suggested in my paper, namely: "When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing men and women shareholders, and will do justice between real persons." (12 Columbia Law Review 517).

In case after case cited in the article the *ratio decidendi* is the disregard of the corporate fiction. Whether one agrees with the courts in their reasoning or not, this fact must be recognized. (See cases cited in 12 Columbia Law Review, pp. 498-503; also my third edition of Clark on Corporations, pp. 10-12).

In fine, the point is this,—that in citing the cases in my paper as illustrative of the doctrine of disregard of the corporate fiction, I was merely presenting the actual view-point of the courts. And that the courts take the precise point of view outlined in the paper cannot be doubted by any reader of their decisions.

Mr. McWilliams also refers in his paper to the interesting decision of the Supreme Court of California in Higgins v. Cali-

fornia Petroleum Co., 147 Cal. 363, 81 Pac. 1070. I deemed this case so important as well as interesting that it was reprinted in Canfield & Wormser's Cases on Private Corporations, pp. 28-33. It is quite true as indicated by Mr. McWilliams that the lower court made no finding of any actual fraud in the transaction. It is difficult for me to reconcile this finding with the ultimate decision in the case disregarding the corporate entities. The Supreme Court indicated that the dummy corporations were formed mainly, perhaps solely, to evade an existing legal obligation, namely, a lease involving the payment of certain royalties. Such a corporate genesis certainly seems steeped in fraud. The Supreme Court rightly decided that under such circumstances it would be monstrous to permit the concept of the legal entity to stand as a stumbling block in the path of justice.

The recent cases, in my judgment, not only in the Supreme Court of California but in the courts of last resort of every progressive jurisdiction, establish the following proposition of law,—that a corporation will be regarded as a legal entity distinct and separate from its stockholders only so long as the doctrine is not used to defeat public convenience, justify wrong, or defend crime, in which case it will be regarded as a mere association of individuals. The recent decision of the Supreme Court of the United States in Linn & Lane Timber Co. v. United States, 236 U. S. 574, 35 Sup. Ct. 440, 59 L. Ed. 725, cannot be rationally explained upon any theory other than that of disregard of the corporate entity. Coming from such a high source, it is surely entitled to be regarded with respect. I have been much amused at the frenzied attempts of certain over-conservative Law Journals and Law Reviews hereabouts to explain away the significance of this decision, which unfortunately has not received the degree of attention from the bench and bar which it deserves.

The day is rapidly passing in our law when injustice may be achieved under the cloak of technicality. The doctrine of corporate entity like every other legal doctrine may not be used to obtain an unrighteous advantage. And it follows that rational and progressive courts are fearlessly piercing the veil of corporate entity day after day where this is required in order to achieve justice, which, after all, is the ultimate aim of law.

Yours very truly,

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